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14
15 **UNITED STATES DISTRICT COURT**
16 **EASTERN DISTRICT OF CALIFORNIA**
17 **SACRAMENTO DIVISION**

18 WARREN HANNING MITCHELL,) Case No. 2:22-cv-00926-KJM-JDP

19 Plaintiff,)

20 vs.)

21 FCA US LLC; and DOES 1 through)
10, inclusive)

22 Defendants.)

) **STIPULATED [PROPOSED]**
PROTECTIVE ORDER –
DISCOVERY ONLY

) Complaint Filed: May 31, 2022
Trial Date: None set

23
24
25 1. **PURPOSES AND LIMITATIONS**

26 Disclosure and discovery activity in this action are likely to involve
27 production of confidential, proprietary, or private information for which special
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1 protection from public disclosure and from use for any purpose other than
2 prosecuting this litigation may be warranted. Accordingly, the parties hereby
3 stipulate to and petition the court to enter the following Stipulated Protective
4 Order. The parties acknowledge that this Order does not confer blanket
5 protections on all disclosures or responses to discovery and that the protection it
6 affords from public disclosure and use extends only to the limited information or
7 items that are entitled to confidential treatment under the applicable legal
8 principles. The parties further acknowledge, as set forth in Section 12.3, below,
9 that this Stipulated Protective Order does not entitle them to file confidential
10 information under seal; Civil Local Rule 141 sets forth the procedures that must
11 be followed and the standards that will be applied when a party seeks permission
12 from the court to file material under seal.

13 **2. DEFINITIONS**

14 **2.1 Challenging Party:** a Party or Non-Party that challenges the
15 designation of information or items under this Order.

16 **2.2 “CONFIDENTIAL” Information or Items:** information (regardless of
17 how it is generated, stored or maintained) or tangible things that qualify for
18 protection under Federal Rule of Civil Procedure 26(c).

19 **2.3 Counsel (without qualifier):** Outside Counsel of Record and House
20 Counsel (as well as their support staff).

21 **2.4 Designating Party:** a Party or Non-Party that designates information
22 or items that it produces in disclosures or in responses to discovery as
23 “CONFIDENTIAL.”

24 **2.5 Disclosure or Discovery Material:** all items or information,
25 regardless of the medium or manner in which it is generated, stored, or
26 maintained (including, among other things, testimony, transcripts, and tangible
27 things), that are produced or generated in disclosures or responses to discovery in
28 this matter.

1 2.6 Expert: a person with specialized knowledge or experience in a
2 matter pertinent to the litigation who has been retained by a Party or its counsel
3 to serve as an expert witness or as a consultant in this action.

4 2.7 House Counsel: attorneys who are employees of a party to this
5 action. House Counsel does not include Outside Counsel of Record or any other
6 outside counsel.

7 2.8 Non-Party: any natural person, partnership, corporation, association,
8 or other legal entity not named as a Party to this action.

9 2.9 Outside Counsel of Record: attorneys who are not employees of a
10 party to this action but are retained to represent or advise a party to this action
11 and have appeared in this action on behalf of that party or are affiliated with a
12 law firm which has appeared on behalf of that party.

13 2.10 Party: any party to this action, including all of its officers, directors,
14 employees, consultants, retained experts, and Outside Counsel of Record (and
15 their support staffs).

16 2.11 Producing Party: a Party or Non-Party that produces Disclosure or
17 Discovery Material in this action.

18 2.12 Professional Vendors: persons or entities that provide litigation
19 support services (e.g., photocopying, videotaping, translating, preparing exhibits
20 or demonstrations, and organizing, storing, or retrieving data in any form or
21 medium) and their employees and subcontractors.

22 2.13 Protected Material: any Disclosure or Discovery Material that is
23 designated as “CONFIDENTIAL.”

24 2.14 Receiving Party: a Party that receives Disclosure or Discovery
25 Material from a Producing Party.

26 3. SCOPE

27 The protections conferred by this Stipulation and Order cover not only
28 Protected Material (as defined above), but also (1) any information copied or

1 extracted from Protected Material; (2) all copies, excerpts, summaries, or
2 compilations of Protected Material; and (3) any testimony, conversations, or
3 presentations by Parties or their Counsel that might reveal Protected Material.
4 However, the protections conferred by this Stipulation and Order do not cover
5 the following information: (a) any information that is in the public domain at the
6 time of disclosure to a Receiving Party or becomes part of the public domain
7 after its disclosure to a Receiving Party as a result of publication not involving a
8 violation of this Order, including becoming part of the public record through trial
9 or otherwise; and (b) any information known to the Receiving Party prior to the
10 disclosure or obtained by the Receiving Party after the disclosure from a source
11 who obtained the information lawfully and under no obligation of confidentiality
12 to the Designating Party. Any use of Protected Material at trial shall be governed
13 by a separate agreement or order.

14 **4. DURATION**

15 Even after final disposition of this litigation, the confidentiality obligations
16 imposed by this Order shall remain in effect until a Designating Party agrees
17 otherwise in writing or a court order otherwise directs. Final disposition shall be
18 deemed to be the later of (1) dismissal of all claims and defenses in this action,
19 with or without prejudice; and (2) final judgment herein after the completion and
20 exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
21 including the time limits for filing any motions or applications for extension of
22 time pursuant to applicable law.

23 **5. DESIGNATING PROTECTED MATERIAL**

24 **5.1 Exercise of Restraint and Care in Designating Material for**
25 **Protection.** Each Party or Non-Party that designates information or items for
26 protection under this Order must take care to limit any such designation to
27 specific material that qualifies under the appropriate standards. The Designating
28 Party must designate for protection only those parts of material, documents,

1 items, or oral or written communications that qualify – so that other portions of
2 the material, documents, items, or communications for which protection is not
3 warranted are not swept unjustifiably within the ambit of this Order.

4 Mass, indiscriminate, or routinized designations are prohibited.
5 Designations that are shown to be clearly unjustified or that have been made for
6 an improper purpose (e.g., to unnecessarily encumber or retard the case
7 development process or to impose unnecessary expenses and burdens on other
8 parties) expose the Designating Party to sanctions.

9 If it comes to a Designating Party’s attention that information or items that
10 it designated for protection do not qualify for protection, that Designating Party
11 must promptly notify all other Parties that it is withdrawing the mistaken
12 designation.

13 **5.2 Manner and Timing of Designations.** Except as otherwise provided
14 in this Order (see, e.g., second paragraph of section 5.2(a) below), or as
15 otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies
16 for protection under this Order must be clearly so designated before the material
17 is disclosed or produced.

18 Designation in conformity with this Order requires:

19 (a) For information in documentary form (e.g., paper or electronic
20 documents, but excluding transcripts of depositions or other pretrial or trial
21 proceedings), that the Producing Party affix the legend “CONFIDENTIAL” to
22 each page that contains protected material. If only a portion or portions of the
23 material on a page qualifies for protection, the Producing Party also must clearly
24 identify the protected portion(s) (e.g., by making appropriate markings in the
25 margins).

26 A Party or Non-Party that makes original documents or materials available
27 for inspection need not designate them for protection until after the inspecting
28 Party has indicated which material it would like copied and produced. During the

1 inspection and before the designation, all of the material made available for
2 inspection shall be deemed “CONFIDENTIAL.” After the inspecting Party has
3 identified the documents it wants copied and produced, the Producing Party must
4 determine which documents, or portions thereof, qualify for protection under this
5 Order. Then, before producing the specified documents, the Producing Party
6 must affix the “CONFIDENTIAL” legend to each page that contains Protected
7 Material. If only a portion or portions of the material on a page qualifies for
8 protection, the Producing Party also must clearly identify the protected portion(s)
9 (e.g., by making appropriate markings in the margins).

19 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
20 failure to designate qualified information or items does not, standing alone,
21 waive the Designating Party's right to secure protection under this Order for such
22 material. Upon timely correction of a designation, the Receiving Party must
23 make reasonable efforts to assure that the material is treated in accordance with
24 the provisions of this Order.

25 | P a g e 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Timing of Challenges. Any Party or Non-Party may challenge a
design of confidentiality at any time. Unless a prompt challenge to a
Designating Party's confidentiality designation is necessary to avoid foreseeable,

1 substantial unfairness, unnecessary economic burdens, or a significant disruption
2 or delay of the litigation, a Party does not waive its right to challenge a
3 confidentiality designation by electing not to mount a challenge promptly after
4 the original designation is disclosed.

5 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
6 resolution process by providing written notice of each designation it is
7 challenging and describing the basis for each challenge. To avoid ambiguity as to
8 whether a challenge has been made, the written notice must recite that the
9 challenge to confidentiality is being made in accordance with this specific
10 paragraph of the Protective Order. The parties shall attempt to resolve each
11 challenge in good faith and must begin the process by conferring directly (in
12 voice to voice dialogue; other forms of communication are not sufficient) within
13 14 days of the date of service of notice. In conferring, the Challenging Party
14 must explain the basis for its belief that the confidentiality designation was not
15 proper and must give the Designating Party an opportunity to review the
16 designated material, to reconsider the circumstances, and, if no change in
17 designation is offered, to explain the basis for the chosen designation. A
18 Challenging Party may proceed to the next stage of the challenge process only if
19 it has engaged in this meet and confer process first or establishes that the
20 Designating Party is unwilling to participate in the meet and confer process in a
21 timely manner.

22 6.3 Judicial Intervention. If the Parties cannot resolve a challenge
23 without court intervention, the Designating Party shall file and serve a motion to
24 retain confidentiality within 21 days of the initial notice of challenge or within
25 14 days of the parties agreeing that the meet and confer process will not resolve
26 their dispute, whichever is earlier. Each such motion must be accompanied by a
27 competent declaration affirming that the movant has complied with the meet and
28 confer requirements imposed in the preceding paragraph. Failure by the

1 Designating Party to make such a motion including the required declaration
2 within 21 days (or 14 days, if applicable) shall automatically waive the
3 confidentiality designation for each challenged designation. In addition, the
4 Challenging Party may file a motion challenging a confidentiality designation at
5 any time if there is good cause for doing so, including a challenge to the
6 designation of a deposition transcript or any portions thereof. Any motion
7 brought pursuant to this provision must be accompanied by a competent
8 declaration affirming that the movant has complied with the meet and confer
9 requirements imposed by the preceding paragraph.

10 The burden of persuasion in any such challenge proceeding shall be on the
11 Designating Party. Frivolous challenges, and those made for an improper
12 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
13 parties) may expose the Challenging Party to sanctions. Unless the Designating
14 Party has waived the confidentiality designation by failing to file a motion to
15 retain confidentiality as described above, all parties shall continue to afford the
16 material in question the level of protection to which it is entitled under the
17 Producing Party's designation until the court rules on the challenge.

18 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

19 7.1 Basic Principles. A Receiving Party may use Protected Material that
20 is disclosed or produced by another Party or by a Non-Party in connection with
21 this case only for prosecuting, defending, or attempting to settle this litigation.
22 Such Protected Material may be disclosed only to the categories of persons and
23 under the conditions described in this Order. When the litigation has been
24 terminated, a Receiving Party must comply with the provisions of section 13 below
25 (FINAL DISPOSITION).

26 Protected Material must be stored and maintained by a Receiving Party at
27 a location and in a secure manner that ensures that access is limited to the
28 persons authorized under this Order.

1 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
2 otherwise ordered by the court or permitted in writing by the Designating Party,
3 a Receiving Party may disclose any information or item designated
4 “CONFIDENTIAL” only to:

5 (a) the Receiving Party’s Outside Counsel of Record in this action, as
6 well as employees of said Outside Counsel of Record to whom it is reasonably
7 necessary to disclose the information for this litigation and who have signed the
8 Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit
9 A;

10 (b) the officers, directors, and employees (including House Counsel)
11 of the Receiving Party to whom disclosure is reasonably necessary for this
12 litigation and who have signed the “Acknowledgment and Agreement to Be
13 Bound” (Exhibit A);

14 (c) Experts (as defined in this Order) of the Receiving Party to whom
15 disclosure is reasonably necessary for this litigation and who have signed the
16 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

17 (d) the court and its personnel;

18 (e) court reporters and their staff, professional jury or trial
19 consultants, mock jurors, and Professional Vendors to whom disclosure is
20 reasonably necessary for this litigation and who have signed the
21 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

22 (f) during their depositions, witnesses in the action to whom
23 disclosure is reasonably necessary and who have signed the “Acknowledgment
24 and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the
25 Designating Party or ordered by the court. Pages of transcribed deposition
26 testimony or exhibits to depositions that reveal Protected Material must be
27 separately bound by the court reporter and may not be disclosed to anyone
28 except as permitted under this Stipulated Protective Order.

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

**8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
IN OTHER LITIGATION**

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as “CONFIDENTIAL,” that Party must:

(a) promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as “CONFIDENTIAL” before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party’s permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material – and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another court.

9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE
PRODUCED IN THIS LITIGATION

(a) The terms of this Order are applicable to information produced by a Non-Party in this action and designated as “CONFIDENTIAL.” Such information produced by Non-Parties in connection with this litigation is

1 protected by the remedies and relief provided by this Order. Nothing in these
2 provisions should be construed as prohibiting a Non-Party from seeking
3 additional protections.

4 (b) In the event that a Party is required, by a valid discovery request,
5 to produce a Non-Party's confidential information in its possession, and the Party
6 is subject to an agreement with the Non-Party not to produce the Non-Party's
7 confidential information, then the Party shall:

8 (1) promptly notify in writing the Requesting Party and the Non-
9 Party that some or all of the information requested is subject to a confidentiality
10 agreement with a Non-Party;

11 (2) promptly provide the Non-Party with a copy of the Stipulated
12 Protective Order in this litigation, the relevant discovery request(s), and a
13 reasonably specific description of the information requested; and

14 (3) make the information requested available for inspection by the
15 Non-Party.

16 (c) If the Non-Party fails to object or seek a protective order from
17 this court within 14 days of receiving the notice and accompanying information,
18 the Receiving Party may produce the Non-Party's confidential information
19 responsive to the discovery request. If the Non-Party timely seeks a protective
20 order, the Receiving Party shall not produce any information in its possession or
21 control that is subject to the confidentiality agreement with the Non-Party before
22 a determination by the court. Absent a court order to the contrary, the Non-Party
23 shall bear the burden and expense of seeking protection in this court of its
24 Protected Material.

25 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

26 If a Receiving Party learns that, by inadvertence or otherwise, it has
27 disclosed Protected Material to any person or in any circumstance not authorized
28 under this Stipulated Protective Order, the Receiving Party must immediately (a)

1 notify in writing the Designating Party of the unauthorized disclosures, (b) use
2 its best efforts to retrieve all unauthorized copies of the Protected Material, (c)
3 inform the person or persons to whom unauthorized disclosures were made of all
4 the terms of this Order, and (d) request such person or persons to execute the
5 “Acknowledgment and Agreement to Be Bound” that is attached hereto as
6 Exhibit A.

7 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
8 **PROTECTED MATERIAL**

9 When a Producing Party gives notice to Receiving Parties that certain
10 inadvertently produced material is subject to a claim of privilege or other
11 protection, the obligations of the Receiving Parties are those set forth in Federal
12 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
13 whatever procedure may be established in an e-discovery order that provides for
14 production without prior privilege review. Pursuant to Federal Rule of Evidence
15 502(d) and (e), insofar as the parties reach an agreement on the effect of
16 disclosure of a communication or information covered by the attorney-client
17 privilege or work product protection, the parties may incorporate their agreement
18 in the stipulated protective order submitted to the court.

19 **12. MISCELLANEOUS**

20 12.1 Right to Further Relief. Nothing in this Order abridges the right of
21 any person to seek its modification by the court in the future.

22 12.2 Right to Assert Other Objections. By stipulating to the entry of this
23 Protective Order no Party waives any right it otherwise would have to object to
24 disclosing or producing any information or item on any ground not addressed in
25 this Stipulated Protective Order. Similarly, no Party waives any right to object on
26 any ground to use in evidence of any of the material covered by this Protective
27 Order.

1 12.3 Filing Protected Material. Without written permission from the
2 Designating Party or a court order secured after appropriate notice to all
3 interested persons, a Party may not file in the public record in this action any
4 Protected Material. A Party that seeks to file under seal any Protected Material
5 must comply with Local Rule 141. Protected Material may only be filed under
6 seal pursuant to a court order authorizing the sealing of the specific Protected
7 Material at issue. A sealing order will issue only upon a request establishing that
8 the Protected Material at issue is privileged, protectable as a trade secret, or
9 otherwise entitled to protection under the law. If a Receiving Party's request to
10 file Protected Material under seal is denied by the court, then the Receiving Party
11 may file the information in the public record unless otherwise instructed by the
12 court.

13 **13. FINAL DISPOSITION**

14 Upon final termination of this action, including any and all appeals, counsel
15 for each party must, upon request of the producing party, return all confidential
16 information to the party that produced the information, including any copies,
17 excerpts, and summaries of that information, or must destroy same at the option
18 of the receiving party, and must purge all such information from all machine-
19 readable media on which it resides. Notwithstanding the foregoing, counsel for
20 each party may retain all pleadings, briefs, memoranda, motions, and other
21 documents filed with the Court that refer to or incorporate confidential
22 information, and will continue to be bound by this Order with respect to all such
23 retained information. Further, attorney work product materials that contain
24 confidential information need not be destroyed, but, if they are not destroyed, the
25 person in possession of the attorney work product will continue to be bound by
26 this Order with respect to all such retained information.

27 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

28

1 DATED: November 15, 2022 STRATEGIC LEGAL PRACTICES, APC
2

3 BY: /s/ Ariel Harman-Holmes
4 Ariel Harman-Holmes
5 Attorneys for Plaintiff,
6 WARREN HANNING MITCHELL

7 DATED: November 17, 2022 GORDON REES SCULLY MASUKHANI, LLP
8

9 BY: /s/ Trina Clayton
10 Trina Clayton
11 Attorneys for Defendant,
12 FCA US LLC

13 FOR GOOD CAUSE SHOWN,

14 IT IS SO ORDERED.

15 Dated: November 28, 2022

16 
17 JEREMY D. PETERSON
18 UNITED STATES MAGISTRATE JUDGE

Gordon Rees Scully Mansukhani, LLP
275 Battery Street, Suite 2000
San Francisco, CA 94111

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of perjury
that I have read in its entirety and understand the Stipulated Protective Order that
was issued by the United States District Court for the Eastern District of
California on [] in the case of Warren Hanning Mitchell v FCA US LLC,
Case No. 2:22-cv-00926-KJM-JDP. I agree to comply with and to be bound by
all the terms of this Stipulated Protective Order and I understand and
acknowledge that failure to so comply could expose me to sanctions and
punishment in the nature of contempt. I solemnly promise that I will not disclose
in any manner any information or item that is subject to this Stipulated Protective
Order to any person or entity except in strict compliance with the provisions of
this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Eastern District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name]
of _____ [print or type full address
and telephone number] as my California agent for service of process in
connection with this action or any proceedings related to enforcement of this
Stipulated Protective Order.

Date:

City and State where sworn and signed:

1 Printed name: _____

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